

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

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Dec 20

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL NO. 3:11CR-123- R

MICHAEL STEVEN MCDONALD

DEFENDANT

PLEA AGREEMENT

Pursuant to Rule 11(c)(1) (B) of the Federal Rules of Criminal Procedure, the United States of America, by David J. Hale, United States Attorney for the Western District of Kentucky, and defendant, Michael Steven McDonald, and his attorneys, Scott C. Cox and Mark L. Miller, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Indictment in this case with a violation of Title 18, United States Code, Section 1341. Defendant further acknowledges that the Indictment in this case seeks forfeiture of the contents of three accounts specifically identified in the Notice of Forfeiture in the Indictment, by reason of the offense charged in Count 1 of the Indictment.

2. Defendant has read the charges against him contained in the Indictment, and those charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crime with which he has been charged.

3. Defendant will enter a voluntary plea of guilty to Count 1 in this case. Defendant will plead guilty because he is in fact guilty of the charge. The parties agree to the following factual basis:

Beginning on or about August 9, 2004, and continuing to November 2, 2010, in the

Western District of Kentucky, Nelson County, Kentucky, and elsewhere, the defendant, Michael Steven McDonald, aided and abetted by the co-defendant, Thomas P. Gibson, engaged in a scheme and artifice to defraud, that is, they engaged in check kiting in order to induce Fifth Third Bank to release funds from a \$32 million line of credit issued by the bank in favor of Eastern Livestock Company. The check-kiting scheme caused grossly inflated balances in accounts maintained by Eastern Livestock with the bank. To further support the fraudulent scheme, the defendants caused false and fraudulent Borrowing Base Certificates to be submitted on a daily basis to Fifth Third, which documents regularly contained grossly inflated accounts receivable figures. The U.S. mail and/or commercial interstate carrier service was used in the execution of the scheme in that the defendants caused checks to be issued from Eastern Livestock accounts which were mailed to business associates who agreed that checks from their business accounts could be deposited into the Eastern Livestock account at Fifth Third thereby temporarily inflating the account balance. Two such Eastern Livestock checks in the amounts of \$94,374.48 and \$98,101.93, were mailed by United States Postal Service to a designated address in Nelson County, Kentucky, on or about September 5, 2008. When Fifth Third closed Eastern Livestock's accounts because of the check kite in November 2010, Fifth Third, Wells Fargo, and hundreds of cattle sellers sustained losses. The cattle sellers had received Eastern Livestock checks in payment for cattle, and these checks were dishonored by Fifth Third Bank and returned when Eastern Livestock's accounts were closed because there were insufficient funds to cover the hundreds of thousands of dollars in outstanding Eastern Livestock checks issued by the defendants.

4. Defendant understands that the charge to which he will plead guilty carries a maximum term of imprisonment of 30 years, a maximum fine of \$1,000,000, and a term of supervised release of up to five years. Defendant understands that an additional term of imprisonment may be ordered if the terms of the supervised release are violated, as explained in 18 U.S.C. § 3583.

5. Defendant understands that if a term of imprisonment of more than one year is imposed, the Sentencing Guidelines require a term of supervised release and that he will then be subject to certain conditions of release. §§5D1.1, 5D1.2, 5D1.3.

6. Defendant understands that by pleading guilty, he surrenders certain rights set forth below. Defendant's attorney has explained those rights to him and the consequences of his waiver of those rights, including the following:

A. If defendant persists in a plea of not guilty to the charge against him, he has the right to a public and speedy trial. The trial could either be a jury trial or a trial by the judge sitting without a jury. If there is a jury trial, the jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

B. At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

C. At a trial, defendant would have a privilege against self-incrimination and he could decline to testify, without any inference of guilt being drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

7. Defendant understands that the United States Attorney's Office has an obligation to fully apprise the District Court and the United States Probation Office of all facts pertinent to the sentencing process, and to respond to all legal or factual inquiries that might arise either before, during, or after sentencing. Defendant admits all acts and essential elements of the

indictment count to which he pleads guilty.

8. Pursuant to 18 U.S.C. § 3663(c) (3)(B), the parties agree that determining complex issues of fact related to the amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to enter an order of restitution in this case is outweighed by the burden on the sentencing process. Claimed losses by the victims are being made through the chapter 11 bankruptcy for Eastern Livestock Co., LLC, pending in U.S. Bankruptcy Court for the Southern District of Indiana, Case No. 10-90304; through the chapter 7 bankruptcy for the estates of Thomas P. Gibson and Patsy Gibson, pending in U.S. Bankruptcy Court, Case No. 10-93867; and in a civil forfeiture action styled United States v. Contents of Account in the Name of Eastern Livestock and Thomas P. Gibson Held by MF Global Inc., et al, pending in U.S. District Court for the Western District of Kentucky, Case No. 3:11CV-233-R. The defendant further understands that he may be responsible for a fine, costs of prosecution, costs of incarceration and supervision which may be required.

9. Defendant acknowledges liability for the special assessment mandated by 18 U.S.C. § 3013 and will pay the assessment in the amount \$100 to the United States District Court Clerk's Office by the date of sentencing.

10. At the time of sentencing, the United States will

- recommend a sentence of imprisonment within the applicable Guideline Range, but not less than any mandatory minimum term of imprisonment required by law.

- recommend a reduction of 3 levels below the otherwise applicable Guideline for "acceptance of responsibility" as provided by §3E1.1(a) and (b), provided the defendant does not engage in future conduct which violates a condition of bond, constitutes obstruction of justice, or otherwise demonstrates a lack of

acceptance of responsibility. Should such conduct occur and the United States, therefore, opposes the reduction for acceptance, this plea agreement remains binding and the defendant will not be allowed to withdraw his plea.

11. Both parties have independently reviewed the Sentencing

Guidelines applicable in this case, and in their best judgment and belief, conclude as follows:

A. The Applicable Offense Level should be determined as follows:

Base Offense Level (USSG §2B1.1(a)(1))	7
Loss More than \$7,000,000 (USSG §2B1.1(b)(1)(K))	+ 20
250 or more victims (USSG §2B1.1(b)(2)(C))	+ 6
Acceptance of Responsibility (USSG §3E1.1(a) and (b))	- 3
Total Adjusted Offense Level	30

B. The Criminal History of defendant shall be determined upon completion of the presentence investigation, pursuant to Fed. R. Crim. P. 32(c). Both parties reserve the right to object to the USSG §4A1.1 calculation of defendant's criminal history. The parties agree to not seek a departure from the Criminal History Category pursuant to §4A1.3.

C. The foregoing statements of applicability of sections of the Sentencing Guidelines and the statement of facts are not binding upon the Court. The defendant understands the Court will independently calculate the Guidelines at sentencing and defendant may not withdraw the plea of guilty solely because the Court does not agree with either the statement of facts or Sentencing Guideline application.

12. Defendant is aware of his right to appeal his conviction and that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The Defendant knowingly and

voluntarily waives the right (a) to directly appeal his conviction and the resulting sentence pursuant to Fed. R. App. P. 4(b) and 18 U.S.C. § 3742, and (b) unless based on claims of ineffective assistance of counsel or prosecutorial misconduct, to contest or collaterally attack his conviction and the resulting sentence under 28 U.S.C. § 2255 or otherwise.

13. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

14. It is understood that pursuant to Fed. R. Crim. P. 11(c)(1)(B), the recommendations of the United States are not binding on the Court. In other words, the Court is not bound by the sentencing recommendation and defendant will have no right to withdraw his guilty plea if the Court decides not to accept the sentencing recommendation set forth in this Agreement.

15. Defendant agrees that the disposition provided for within this Agreement is fair, taking into account all aggravating and mitigating factors. Defendant states that he has informed the United States Attorney's Office and the Probation Officer, either directly or through his attorney, of all mitigating factors. Defendant will not oppose imposition of a sentence incorporating the disposition provided for within this Agreement, nor argue for any other sentence. If Defendant argues for any sentence other than the one to which he has agreed, he is in breach of this Agreement. Defendant agrees that the remedy for this breach is that the United States is relieved of its obligations under this Agreement, but Defendant may not withdraw his

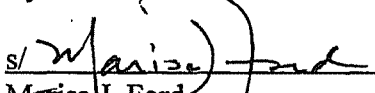
guilty plea because of his breach.

16. This document and the supplemental plea agreement state the complete and only Plea Agreements between the United States Attorney for the Western District of Kentucky and defendant in this case, and are binding only on the parties to this Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that are signed by all parties or on the record in Court. No other promises or inducements have been or will be made to defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

AGREED:

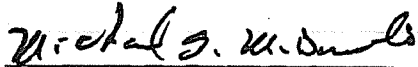
DAVID J. HALE  
United States Attorney

By:

s/   
Marisa J. Ford  
James R. Lesousky, Jr.  
Assistant U.S. Attorneys

12/13/2012  
Date

I have read this Agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

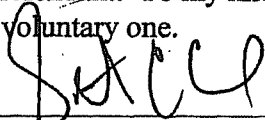


Michael Steven McDonald  
Defendant

12-13-12

Date

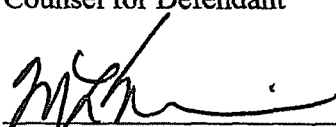
I am the defendant's counsel. I have carefully reviewed every part of this Agreement with the defendant. To my knowledge my client's decision to enter into this Agreement is an informed and voluntary one.



Scott C. Cox  
Counsel for Defendant

12/13/12

Date



Mark L. Miller  
Counsel for Defendant

12-13-12

Date

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